

November 13, 2001

FILE NO. 01-011

ADMINISTRATIVE LAW:  
Authority to Promulgate Rules  
Governing Administrative Expenses  
with Respect to the Illinois Public  
Treasurers' Investment Pool

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The Honorable Judy Baar Topinka  
Treasurer of the State of Illinois  
James R. Thompson Center  
100 West Randolph Street, Suite 15-600  
Chicago, Illinois 60601

Dear Treasurer Topinka:

I have your letter wherein you inquire regarding the propriety of a proposed amendment to the rules previously adopted for the administration of the Illinois Public Treasurers' Investment Pool (74 Ill. Adm. Code 740.5 et seq. (January 11, 2001)), a program authorized by section 17 of the State Treasurer Act (15 ILCS 505/17 (West 2000)), governing the withholding of administrative expenses from the amounts distributed to participants as excess interest earnings. For the reasons hereinafter stated, it is my opinion that the proposed amendment to the State Treasurer's Illinois Public Treasurers' Investment Pool rules is

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consistent with the provisions of section 17 of the State Treasurer Act.

In 1975, the General Assembly amended the provisions of the State Treasurer Act to authorize the State Treasurer to "\* \* \* establish and administer a Public Treasurers' Investment Pool to supplement and enhance the investment opportunities otherwise available to other custodians of public funds for public agencies in this State." (See Public Act 79-1085, effective October 1, 1975; now codified at 15 ILCS 505/17 (West 2000).) Under the Public Treasurers' Investment Pool program, custodians of public funds may deposit funds that are not immediately subject to distribution or that are not currently necessary for operation into a pool, which is then invested by the State Treasurer in accordance with Illinois law.

In 1977, the Treasurer's office promulgated rules concerning the administration of the Public Treasurers' Investment Pool (hereinafter referred to as the "Pool"). (See 5 Ill. Reg. 11090 (1977).) These rules address, inter alia, eligibility and participation requirements for the Pool. (74 Ill. Adm. Code 740.10 and 740.20 (January 11, 2001).) With regard to the latter, both section 17 of the State Treasurer Act and the rules promulgated thereunder contemplate the collection by the State Treasurer of certain administrative fees from the Pool's earn-

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ings. (74 Ill. Adm. Code 740.20(c) (January 11, 2001).) Subsequent to the payment of the appropriate administration expenses from the Pool's earnings, section 17 of the State Treasurer Act provides for the crediting or distribution of any excess interest earnings to the custodians participating in the Pool. Recently, the Treasurer's office has proposed an amendment to the language of the Pool's rules which provides for the Treasurer to withhold an amount equal to the anticipated administrative expenses for the following year from the amounts distributed as excess interest earnings. (See 25 Ill. Reg. 7882-7885 (2001).) You have requested that we review the proposed changes to determine whether the amendatory language is consistent with the provisions of section 17 of the State Treasurer Act.

It is well established that public officers possess only those powers that are expressly granted to them by statute, together with those powers that may be necessarily implied therefrom to effectuate the powers that have been granted. (United States v. Jones (7<sup>th</sup> Cir. 1953), 204 F.2d 745, 754, cert. denied, 346 U.S. 854, 74 S. Ct. 67 (1953), rehearing denied, 346 U.S. 905, 74 S. Ct. 216 (1953); McKenzie v. Arthur T. McIntosh & Co. (1964), 50 Ill. App. 2d 370, 377; 1982 Ill. Att'y Gen. Op. 19, 20.) In this regard, section 17 of the State Treasurer Act provides, in pertinent part:

" \* \* \*

The Treasurer shall promulgate such rules and regulations as [s]he deems necessary for the efficient administration of the Public Treasurers' Investment Pool, including specification of minimum amounts which may be deposited in the Pool and minimum periods of time for which deposits shall be retained in the Pool. The rules shall provide for the administration expenses of the Pool to be paid from its earnings and for the interest earnings in excess of such expenses to be credited or paid monthly to the several custodians of public funds participating in the Pool in a manner which equitably reflects the differing amounts of their respective investments in the Pool and the differing periods of time for which such amounts were in the custody of the Pool.

\* \* \*

"

(Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (Yang v. City of Chicago (2001), 195 Ill. 2d 96, 103.) Legislative intent is best evidenced by the language used in the statute. (King v. Industrial Comm'n (2000), 189 Ill. 2d 167, 171.) Where statutory language is clear and unambiguous, it must be given effect as written. In re Consolidated Objections to Tax Levies of School District No. 205 (2000), 193 Ill. 2d 490, 496.

Under the plain language of section 17 of the State Treasurer Act, the General Assembly has directed the State Treasurer to promulgate "\* \* \* necessary [rules] for the effi-

cient administration of the Public Treasurers' Investment Pool \* \* \*, " which " \* \* \* shall provide for the administration expenses of the Pool to be paid from its earnings and for the interest earnings in excess of such expenses to be credited or paid monthly to the several custodians of public funds participating in the Pool \* \* \*." The proposed amendment to 74 Ill. Adm. Code 740.20 (January 11, 2001) provides, in pertinent part:

" \* \* \*

- c) Administrative fees will be charged to the participants. Such administrative fees will be determined by the State Treasurer and paid from earnings of IPTIP, and interest earnings in excess of such expenses shall be credited or paid to participants in a manner that equitably reflects the differing amounts of their respective investments in IPTIP and the differing periods of time for which such amounts were in the custody of IPTIP ~~for from time to time~~ when such surplus exceeds the projected administrative expenses for the following year ~~may be reasonably determined and declared to the custodians of public funds participating in IPTIP in a manner which equitably reflects the differing amounts of their respective investments in IPTIP and the differing periods of time for which such amounts were in the custody of IPTIP.~~ In determining the administrative fee, the Treasurer shall weigh the following factors:

- 1) the total asset size of the IPTIP Pool;
- 2) projected cash flows; and

- 3) anticipated administrative and management expenses. The Treasurer shall notify all participants of any change in the administrative fee. In no event shall the administrative fee exceed 25 basis points or be less than 5 basis points (annualized). One basis point equals 1/100th of a percent.

\* \* \*

"

(See 25 Ill. Reg. 7884-85 (2001).)

In the proposed amendment quoted above, added language is underscored while language being deleted is indicated by strike-outs.

Under the language of the current rule, administrative fees are determined by the State Treasurer and paid from the earnings of the Pool "from time to time" when it is determined that interest income exceeds the administrative expenses. The proposed amendment provides that excess interest earnings will be paid to participants when the earnings "\* \* \* exceed[ ] the projected administrative expenses for the following year. \* \* \*" Section 17 of the State Treasurer Act is silent with respect to the basis upon which excess interest earnings are to be calculated. It is well established, however, that administrative agencies are authorized, within the statutes which created them, to determine, define and implement such statutes through the adoption of rules and regulations. (Albazzaz v. Illinois Department of Professional Regulation (2000), 314 Ill. App. 3d 97,

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106.) In doing so, a rule adopted by an administrative agency must be reasonable and not arbitrary. Shannon v. Industrial Comm'n (1987), 160 Ill. App. 3d 520, 522.

The amendatory language authorizes the State Treasurer to retain from the Pool's earnings an amount equal to "\* \* \* the projected administrative expenses for the following year. \* \* \*" I have been advised that this has been the practice for many years under the current language of the administrative rule. Thus, the amendment essentially codifies the current practice in determining when earnings are considered to be excess. Moreover, the purpose of this amendment has been explained as requiring the Treasurer to distribute all earnings in excess of that withheld for administrative expenses, which will prevent an excessive accumulation of interest earnings. (See 25 Ill. Reg. 7882-7883 (2001).) The creation of a reserve in which moneys in the amount of next year's projected administrative expenses are maintained does not appear to be unreasonable. I assume that notice of the change will be provided to the participating custodians, and, because participation in the pool is entirely voluntary, any participant who objects to the basis for withholding administrative fees may elect not to participate in the future.

For the reasons stated, it is my opinion that the proposed amendment to the State Treasurer's rules for the Illi-

nois Public Treasurers' Investment Pool currently set out at 25  
Ill. Reg. 7882-7885 (2001) is not inconsistent with the provi-  
sions of section 17 of the State Treasurer Act.

Sincerely,

JAMES E. RYAN  
Attorney General